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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/509,255	03/23/2000	NATALYA RAPOPORT	T5986PCT.US	3065

20450 7590 05/23/2003

ALAN J. HOWARTH
P.O. BOX 1909
SANDY, UT 84091-1909

EXAMINER

WEBMAN, EDWARD J

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 05/23/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

BEST AVAILABLE COPY

Application No. 011,989,255

Applicant(s)

RAPOPORT

Examiner

WEBMAN

Group Art Unit

1617

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 2/20/03
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 63, 64, 66-68, 74, 75, 77-81, 83-85 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 63, 64, 66-68, 74, 75, 77-81, 83-85 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 63-64, 66-68, 74-75, 77-81, 83-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kwon et al '95 in view of Unger et al '430.

Kwon et al '95 teach PEO-Polybenzyl ASP micelles containing Adriamycin (Title, abstract.)

Unger '430 teaches delivery of bioactive agents from vesicular species by rupturing them with ultrasound (column 28 lines 32-36). Micelles are specified (abstract).

It would be obvious to one of ordinary skill to deliver the active agents in the micelles of Kwon et al '95 by rupturing the micelles with ultrasound in view of Unger '430.

As to the claimed enhancement of uptake and reduction of side effects, one of ordinary skill would recognize such benefits would inure as a matter of course from the local nature of the ultrasound application.

As to the claimed ruboxyl, it is argued that it is equivalent to duxorubicin. No criticality has been shown. In re Boesch 205 USPQ 215 (CCPA 1980).

Applicants argue that Unger '430 is invalid for Hydrophobic drugs, arguing a tendency to repel. However, such an argument is mere opinion. Applicants also argue

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that Unger et al do not teach the claimed micelles. However, if Unger et al did so teach, applicants would be facing a rejection under 35 USC 101.

No claims allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 308-4432. The examiner can normally be reached on Monday-Friday 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan can be reached on 305-1877. The fax phone number for the organization where this application or proceeding is assigned is 305-3592.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1234.

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Webman/tgd
April 30, 2003


EDWARD J. WEBMAN
PATENT ATTORNEY
GROUP 1500